

IMPACT FEES: BASIC PRINCIPLES ARE THERE ANY?

A LAWYER'S VIEW

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WHY IS IT IMPORTANT

- 1. INTERPRETING IF ACTS OR DOING IFs WITHOUT AN ACT
- 2. DRAFTING/AMENDING IF ACTS
- 3. COORDINATING IFs WITH OTHER DEVELOPER FUNDING APPROACHES
- PREDICTING EVOLUTION OF IFs

IMPACT FEE MAGNA CHARTA

- I. LAND DEVELOPMENT SHALL NOT BE PERMITTED UNLESS ADEQUATE CAPITAL FACILITIES EXIST OR ARE ASSURED
- II. LAND DEVELOPMENT SHALL BEAR A PROPORTIONATE COST OF THE PROVISION OF THE NEW OR EXPANDED CAPITAL FACILITIES REQUIRED BY SUCH NEW DEVELOPMENT

MAGNA CHARTA CONTINUED

- III. THE IMPOSITION OF IMPACT FEES AND DEDICATION REQUIREMENTS ARE THE/A PREFERRED METHOD OF REGULATING LAND DEVELOPMENT IN ORDER TO ASSURE THAT IT BEARS A PROPORTIONATE SHARE OF THE COST OF CAPITAL FACILITIES NECESSARY TO ACCOMMODATE THAT DEVELOPMENT AND TO PROMOTE AND PROTECT THE HEALTH, SAFETY, AND GENERAL WELFARE.

RELAX

- IT'S NOT A TAX!

DUAL RATIONAL NEXUS TEST

- PRONG 1
- IMPACT FEES MAY BE NO MORE THAN THE GOVERNMENT'S INFRASTRUCTURE COSTS WHICH ARE REASONABLY ATTRIBUTABLE TO NEW DEVELOPMENT
- aka PROPORTIONATE SHARE
- CREDITS?

DRN TEST: PRONG 2

- The new development required to pay impact fees must benefit from the expenditure of those fees

WHAT INFRASTRUCTURE

- SYSTEM V. PROJECT
- AKA NONSITE RELATED V. SITE RELATED
- AKA OFF-SITE V. ON-SITE

WHEN IS AN IMPACT FEE NOT AN IMPACT FEE?

- PREDICTION: USE OF OTHER TERMINOLGY FOR IMPACT FEES TO ESCAPE VARIOUS JUDICIAL AND LEGISLATIVE RESTRICTIONS
- PREDICTION: GREATER COMBINATION OF DEVELOPER FUNDING DEVICES
 - EXAMPLE DESTIN WORK FORCE HOUSING ORDINANCE

DESTIN APPROACH

- 1. REQUIRE ON-SITE CONSTRUCTION
- 2. OFF-SITE CONSTRUCTION
- 3. CONVERT MARKET TO WORKFORCE
- 4. “TRANSFER” OBLIGATION TO NON PROFIT
- 5. PAY FEE-IN -LIEU